UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA - Yuma

MAGISTRATE JUDGE'S MINUTES

DATE: 5/20/08 CASE NUMBER: 08-15770M-SD-001

USA vs. Rafael Heriberto Gutierrez-Esparza

U.S. MAGISTRATE JUDGE: JAY R. IRWIN #: 70BK

A.U.S. Attorney ______

INTERPRETER Ricardo Gonzalez
LANGUAGE Spanish

Attorney for Defendant Brenda Sandoval (AFPD)
MATERIAL WITNESS(es): ______
MATERIAL WITNESS(es) state true name(s) to be: ______
Attorney for Material Witness(es): _

DEFENDANT: ☐ PRESENT ☐ NOT PRESENT ☒ CUSTODY

DOA____
☐ Financial Afdvt taken
☐ Rule 5(c)(3)
☐ Initial Appearance
☐ Defendant Sworn
☐ Defendant states true name to be ___. Further proceedings ORDERED in Defendant's true name.
☐ Appointment of counsel hearing held
☐ Financial Afdvt sealed

DETENTION HEARING:
☐ Held ☐ Con't ☐ Submitted ☐ Reset
Set for:
Before:
☐ Defendant ordered temporarily detained in the custody of the United States Marshal
☐ Defendant ordered released ______
☐ Defendant continued detained pending trial
☐ Flight risk ☐ Danger

IDENTITY HEARING:
☐ Held ☐ Con't ☐ Submitted ☐ Reset
☐ Waived
Set for:
Before:
☐ Warrant of removal issued.

PRELIMINARY HEARING:
☐ Held ☐ Con't ☐ Submitted ☐ Reset
☐ Waived
Set for:
Before:
☐ Probable cause found ☐ Dismissed
☐ Held to answer before District Court

STATUS HEARING: re: Waiver of Venue
☒ Held ☐ Con't ☐ Reset
Set for:
Before:

Other: Government moves to dismiss complaint. Defense has no objection. Court grants motion and dismisses case without prejudice. Case is closed.

Recorded by Courtsmart (2 min)
BY: Angela J. Tuohy
Deputy Clerk

UNITED STATES DISTRICT COURT **MAGISTRATE JUDGE'S MINUTES**
SOUTHERN DISTRICT OF CALIFORNIA - Yuma

DATE: 5/19/2008 CASE NUMBER: 08-15770M-SD

USA vs. Rafael Heriberto Gutierrez-Esparza

U.S. MAGISTRATE JUDGE: JAY R. IRWIN #: 70BK

A.U.S. Attorney ______ INTERPRETER Ricardo Gonzalez
LANGUAGE Spanish

Attorney for Defendant Brenda Sandoval (AFPD)
MATERIAL WITNESS(es): ______
MATERIAL WITNESS(es) state true name(s) to be: ______
Attorney for Material Witness(es): _

DEFENDANT: ☒ PRESENT ☐ NOT PRESENT ☒ CUSTODY

DOA 5/17/08
☐ Financial Afdvt taken
☐ Rule 5(c)(3)

☒ Initial Appearance
☒ Defendant Sworn
☐ Defendant states true name to be ___. Further proceedings ORDERED in Defendant's true name.

☒ Appointment of counsel hearing held
☐ Financial Afdvt sealed

DETENTION HEARING: ☐ Held ☐ Con't ☐ Submitted ☐ Reset Set for: Before: ☒ Defendant ordered temporarily detained in the custody of the United States Marshal ☐ Defendant ordered released ______ ☐ Defendant continued detained pending trial ☐ Flight risk ☐ Danger	**IDENTITY HEARING:** ☐ Held ☐ Con't ☐ Submitted ☐ Reset ☐ Waived Set for: Before: ☐ Warrant of removal issued.
PRELIMINARY HEARING: ☐ Held ☐ Con't ☐ Submitted ☐ Reset ☐ Waived Set for: Before: ☐ Probable cause found ☐ Dismissed ☐ Held to answer before District Court	**STATUS HEARING:** re: Waiver of Venue ☐ Held ☐ Con't ☐ Reset Set for: 5/20/08 at 1:00 pm Before: Magistrate Judge Irwin

Other: Defendant declines to sign waiver of venue. Government moves for a continuance. Defense has no objection. Court grants motion and sets status hearing.

Recorded by Courtsmart
BY: Angela J. Tuohy
Deputy Clerk

United States District Court

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA
V.
Rafael Heriberto GUTIERREZ-Esparza
Citizen of Mexico
YOB: 1987
095734485
Illegal Alien

CRIMINAL COMPLAINT

CASE NUMBER: 08-15770M-SD

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief.

COUNT I

That on or about February 28, 2004, near San Ysidro, Califirnia in the Southern District of California, Defendant Rafael Heriberto GUTIERREZ-Esparza, an alien, did knowingly and willfully enter the United States at a time or place other than as designated by Immigration Officers of the United States of America, in violation of Title 8, United States Code, Section 1325 (Misdemeanor).

Continued on the attached sheet and made a part hereof. ☒ Yes ☐ No

Signature of Complainant
Gabe Diaz
Senior Patrol Agent

Sworn to before me and subscribed in my presence,

May 19, 2008 at Yuma, Arizona
Date City and State

Jay R. Irwin, U.S. Magistrate
Name & Title of Judicial Officer

Signature of Judicial Officer

STATEMENT OF FACTUAL BASIS

Defendant: Rafael Heriberto GUTIERREZ-Esparza

Dependents: None

IMMIGRATION HISTORY: The Defendant is an illegal alien.

CRIMINAL HISTORY:

DATE	LOCATION	OFFENSE	DISPOSITION
07/23/06	San Bernardino, CA	DUI Alcohol/Drug w/ Priors	Convicted jail, infraction, Fine

Narrative: The Defendant, a citizen of Mexico and illegally within the United States, was encountered by Blythe Border Patrol Agents near Blythe, California.

The Defendant was questioned as to his citizenship and immigration status. Agents determined that the Defendant is an undocumented National of Mexico and illegally in the United States.

The Defendant was transported to the Blythe station for processing. During processing, questioning and computer record checks the above criminal and immigration information was obtained as it relates to this Defendant.

The Defendant last entered the United States illegally without inspection near San Ysidro, Califirnia on February 28, 2004.

Charges: 8 USC§1325 (Misdemeanor)

Signature of Complainant

Sworn to before me and subscribed in my presence,

May 19, 2008
Date

Signature of Judicial Officer

Probable Cause Statement

I, Senior Patrol Agent Gabe Diaz, declare under penalty of perjury, the following is true and correct:

STATEMENT OF FACTUAL BASIS

Defendant: Rafael Heriberto GUTIERREZ-Esparza

Dependents: None

IMMIGRATION HISTORY: The Defendant is an illegal alien.

CRIMINAL HISTORY:

DATE	**LOCATION**	**OFFENSE**	**DISPOSITION**
07/23/06	San Bernardino, CA	DUI Alcohol/Drug w/ Priors	Convicted jail, infraction, Fine

Narrative: The Defendant, a citizen of Mexico and illegally within the United States, was encountered by Blythe Border Patrol Agents near Blythe, California.

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The Defendant was transported to the Blythe station for processing. During processing, questioning and computer record checks the above criminal and immigration information was obtained as it relates to this Defendant.

The Defendant last entered the United States illegally without inspection near San Ysidro, Califirnia on February 28, 2004.

Executed on: *May 18, 2008* *Time:* *10:21 AM*

Signed: [signature] *Senior Patrol Agent*

Finding of Probable Cause

On the basis of the facts presented in the foregoing Probable Cause Statement, consisting of one page, I find probable cause to believe that the defendant(s) named therein committed the offense on February 28, 2004 in violation of Title 8, United States Code, Section 1325.

Finding made on: Date May 18, 2008 *Time* 11:03

Signed: [signature] *United States Magistrate Judge*